

PATENT**REMARKS**

Claims 35-80 were presented for examination and were pending in this application. In an Official Action dated February 4, 2005, claims 35-80 were rejected. Applicants herein amend claims 35-39, 41-45, 47, 50, 57-63, 65, 73-78, and 79 and cancel claims 40 and 48-49. Applicants thank Examiner for speaking with Applicants' representative on May 18, 2005 and address Examiner's comments below. To the extent that Applicants' summary of this conversation is required, this office action response serves as this summary in accordance with MPEP §713.04. Based on the above Amendment and the following Remarks, Applicants respectfully request that Examiner reconsider all outstanding rejections, and withdraw them.

Examiner comments

In paragraph 2 of the Office Action, Examiner commented that claims 50-64 provide a non-trivial practical application in the technological arts in light of the specification. During an interview with Applicants' representative, Examiner clarified that this comment was meant to affirm the patentability of these claims and was not intended to form a rejection or of these claims. Nor was it intended to reject or form the basis of any negative inference regarding any other pending claims. Because there is no rejection, no specific response has been solicited or required. Applicants thank Examiner for the clarification.

Rejection under 35 USC §112

In paragraph 4 of the Office Action, Examiner rejected claims 35-80 as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicants

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regard as the invention. The basis of this rejection was Examiner's assertion that Applicants claim a buying group "that [] need not be performed on-line." However, Applicants respectfully point out that each of the pending independent claims recites "on-line buying group" and that the term "buying group" does not appear in any of the claims without the antecedent "on-line." In addition, Applicants point Examiner to relevant portions of the specification that discuss and define on-line buying group, including for example, at pp. 1:10-27, 5:12-17 and relevant portions of the application incorporated by reference in the first paragraph of the specification.

For the above reasons, Applicants request withdrawal of this rejection and invite Examiner to contact Applicants' representative if further concerns remain.

Rejections under 35 USC §103

Examiner rejected claims 35, 38, 40-42, 48-50, 53, 55-57, 63-65, 68, 70-73, 79, and 80 under 35 USC § 103(a) as unpatentable over Pallakoff in view of Clearwater and Fisher. This rejection is respectfully traversed.

Independent claim 1 has been amended to include a "merchandising staff data processing system...configured to define first price curve...and dynamically define a second price curve during the on-line buying-group sale". This second price curve is defined responsive to input from the seller in order to approach the seller's sales goal. Beneficially, the claimed invention allows a seller to define a price curve on the fly during a buying-group sale in order to approach the seller's sales goals. Similarly, independent claim 50 has been amended to recite receiving a merchandising staff input provided by a user associated with a seller and using it to modify a price curve for a featured item in an on-line buying group sale in order to approach the seller's sales goals. The other independent claims contain similar elements.

The references, alone or in combination, do not contain the recited elements. At best Pallakoff discloses the concept of various price thresholds (4:27-29). However, these thresholds

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are presented when the seller specifies his offer (Fig 3, at 31) and are not dynamically determined during the on-line buying group sale as claimed. Furthermore, the decision of which price to offer is determined by whether demand has reached a certain level, rather than input from an agent of the seller as described in the claimed invention. Similarly, Clearwater discloses a demand curve (6:3-18); however this demand curve is determined before the auction begins. Once the auction begins, there is no dynamic determination of a second price curve as claimed. Fisher teaches adjustment of prices but again, the adjustment is based on a predetermined algorithm rather than a dynamic determination, based on seller input as claimed. In the system of Fisher, "if a certain sales volume is not achieved in a specified period of time, the electronic auction system automatically reduces the price by a predetermined amount or a predetermined percentage of the price and updates the merchandise catalog page accordingly." (11:47-52) Indeed, a main principle of Fisher is that an interactive auction can be conducted without any human input. (Abstract) The recited elements are not met by any of these references, in alone or combination and the rejected claims, as well as remaining pending claims that depend on them, are patentable over these references.

Furthermore, Clearwater and Fisher cannot be combined with Pallakoff as suggested by the Examiner because to do so would change the principle of operation. Clearwater and Fisher are both references that take place in an auction context (see Abstracts), whereas Pallakoff is directed at "demand based pricing," that is, prices which go down as the volume of units sold goes up. (1:60-163). In an auction, however, the price goes up as bidders bid up the item or items being sold. A combination of Clearwater and/or Fisher with Pallakoff would impossibly result in a selling scenario where price went both down and up. These references cannot be combined as proposed.

Examiner rejected claims 36, 37, 39, 54, 66, 67, and 69 under 35 USC § 103(a) as

unpatentable over Pallakoff in view of Clearwater, Fisher and Official Notice regarding the definition of gross margin or profit. Assuming *arguendo* that Official Notice was taken properly, this rejection is respectfully traversed. First, these claims are patentable over the three cited references for the reasons discussed above. The Official Notice does not cure the defect of these references. In addition, the rejection is based on the premise that "cost is held constant."

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However, not only is this not generally the case, the pending specification shows a scenario in which it is patently untrue, in which the cost curve decreases as volume goes up. (See, i.e., Figure 3B, at 100, 102)

Examiner rejected the remainder of the claims under various combinations of the references already discussed, Official Notices regarding the definition of histogram and ordinary skill in the art, and Ando. Assuming *arguendo* that either of the Official Notices were taken properly, this rejection is respectfully traversed. These claims are patentable over the three cited references and Official Notice already discussed. The other Official Notices do not address the defects of these references. Ando, is similarly inapposite to the claimed invention because it discusses forecasting generally, and does not disclose the concept of a price curve calculated or modified during an on-line buying group sale based on seller input as claimed. The rejected claims are patentable over the cited references and Official Notice.

Conclusion

In sum, Applicants respectfully submit that the pending claims as presented herein are patentably distinguishable over the cited references. Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them. In addition, Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully submitted,
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